

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-cv-329-GKF(SAJ)
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S RESPONSE TO MOTION OF OKLAHOMA FARM
BUREAU, INC. FOR PERMISSION TO FILE BRIEF AS *AMICUS CURIAE* IN
OPPOSITION TO THE PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), hereby submits this response in opposition to the Motion of the Oklahoma Farm Bureau, Inc.'s ("Farm Bureau") for Permission to File Brief as *Amicus Curiae* in Opposition to the Plaintiff's Motion for Preliminary Injunction [DKT #1402] ("*Amicus* Motion"). Because the subject of the Farm Bureau's proposed *amicus* brief would not be analytically useful to the Court and, thus, is contrary to principles governing *amicus curiae* participation, the *Amicus* Motion should be denied.

I. The Farm Bureau's *Amicus* Motion should be denied because the subject of its proposed *amicus* brief would not be useful to the Court's consideration of the State's Motion for Preliminary Injunction

The principles governing the grant to participate as *amicus curiae* are well-settled. "There is no inherent right to file an *amicus curiae* brief with the Court. It is left entirely to the discretion of the Court." *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999); *Fluor Corp. & Affiliates v. United States*, 35 Fed. Cl. 284, 285 (1996); *Waste Management of*

Pennsylvania, Inc. v. City of York, 162 F.R.D. 34, 36 (M.D. Pa. 1995). "A court may grant leave to appear *amicus curiae* if it deems the proffered information timely and useful." *Hawksbill Sea Turtle v. FEMA*, 11 F. Supp. 2d 529, 541 (D.V.I. 1998), quoting *Liberty Lincoln Mercury v. Ford Marketing Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993).

Not only must the proffered information be timely and useful, but the movant seeking to participate as *amicus curiae* "must be a friend of the court and not a friend of a party to the cause." *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982). As explained by the *Leigh* court:

Historically . . . an *amicus curiae* is an impartial individual who suggests the interpretation and status of the law, gives information concerning it, and whose function is to advise in order that justice may be done, rather than to advocate a point of view so that a cause may be won by one party or another. . . . Indeed, if the proffer comes from an individual with a partisan, rather than impartial view, the motion for leave to file an *amicus* brief is to be denied, in keeping with the principle that an *amicus* must be a friend of the court and not a friend of a party to the cause. C. Rembar, *The Law of The Land* 330 (1980). . . . The privilege of being heard *amicus* rests in the discretion of the court which may grant or refuse leave according as it deems the proffered information timely, useful, or otherwise, 3A C.J.S. *Amicus Curiae* § 3

Leigh, 535 F. Supp. at 420-22 (citation omitted).

Furthermore, unnecessary *amicus* submissions have been criticized as imposing a "real burden on the court system," "impos[ing] a burden of study and the preparation of a possible response on the parties," "more often than not sponsored or encouraged by one or more of the parties," possibly "intended to circumvent the page limitations on the parties' briefs," and "attempts to inject interest-group politics into the federal appellate process by flaunting the interest of a trade association or other interest group in the outcome." *National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 616-17 (7th Cir. 2000).

The Farm Bureau's *Amicus* Motion contravenes these principles because its proposed *amicus* brief would lack utility inasmuch as it would fail to address facts or legal principles that

are relevant to the Court's consideration of the State's motion for a preliminary injunction. In this regard, participation as *amicus curiae* is not permitted where the proposed submission is not useful to the Court. See *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 282 F. Supp. 2d 1271, 1274 (D.N.M. 2002) (denying leave to file *amicus* brief for lack of utility); *Long*, 49 F. Supp. 2d at 1177-78 (same); *Hawksbill Sea Turtle*, 11 F. Supp. 2d at 541 (denying leave because proposed *amicus* submission "lack[ed] utility since it does not directly address the facts or law at issue in this case").

Here, at its core, the Farm Bureau seeks *amicus* participation to address the business impact on agricultural producers.¹ See *Amicus* Motion, pp. 1-2. An injunction's business impact is not, however, an appropriate consideration for the Court when adjudicating a governmental plaintiff's request for an injunction. As explained in the State's motion for preliminary injunction, "the law of injunctions differs with respect to governmental plaintiffs (or private attorneys general) as opposed to private individuals. Where the plaintiff is a sovereign and where the activity may endanger the public health, 'injunctive relief is proper, without resort to balancing.' *Illinois v. Milwaukee*, 599 F.2d 151, 166 (7th Cir.1979), *rev'd on other grounds*, 451 U.S. 304, 101 S. Ct. 1784, 68 L. Ed. 2d 114 (1981)." *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 337-38 (4th Cir. 1983); see also *EPA v. Environmental Waste Control, Inc.*, 917 F.2d 327, 332 (7th Cir. 1990) (same); *United States v. Bethlehem Steel Corp.*, 38 F.3d 862, 868 (7th Cir. 1994) (same); *United States v. Marine Shale Processors*, 81 F.3d 1329, 1359 (5th Cir. 1996) ("when the United States or a sovereign state sues in its capacity as protector of the public interest, a court may rest an injunction entirely upon a determination that the activity at issue constitutes a risk of danger to the public"). Because "balancing" is not appropriate when

¹ Throughout its *Amicus* Motion, the Farm Bureau attempts, incorrectly, to characterize the agricultural producers' economic interests as the "public interest."

adjudicating a governmental plaintiff's request for an injunction,² the Farm Bureau's proposed *amicus* brief on the subject of economic impact does not offer insights that are appropriate for the Court's consideration. Thus, the Farm Bureau cannot satisfy the utility requirement of *amicus* participation, and its *Amicus* Motion must be denied.³

II. Conclusion

For the foregoing reasons, the Motion of the Oklahoma Farm Bureau for Permission to File Brief as *Amicus Curiae* [DKT #1402] should be denied.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
 ATTORNEY GENERAL
 Kelly H. Burch OBA #17067
 J. Trevor Hammons OBA #20234
 Tina Lynn Izadi OBA #17978
 Daniel P. Lennington OBA #21577
 ASSISTANT ATTORNEYS GENERAL
 State of Oklahoma
 313 N.E. 21st St.
 Oklahoma City, OK 73105
 (405) 521-3921

/s/ Richard T. Garren

M. David Riggs OBA #7583
 Joseph P. Lennart OBA #5371

² In fact, it is noteworthy that this Court has denied discovery pertaining to the potential adverse economic consequences of the State's case on contract growers and the economies of Oklahoma and Arkansas on relevancy grounds. *See* October 24, 2007 Opinion and Order [DKT #1336], p. 3 ("The motion [DKT #1221] is denied as to Interrogatories numbered 7, 8 and 9 on grounds of relevance").

³ It should not be overlooked that given the number of Defendants responding to the State's motion for preliminary injunction, and the anticipated intensity of their response briefs, the proposed *amicus* brief could not present anything of relevance which will not be more than adequately covered by Defendants.

Richard T. Garren OBA #3253
Douglas A. Wilson OBA #13128
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis Werner Bullock OBA #1305
James Randall Miller OBA #6214
MILLER, KEFFER & BULLOCK
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

David P. Page OBA #6852
BELL LEGAL GROUP
P. O. Box 1769
Tulsa, Ok 74101-1769
(918) 398-6800

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent

(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
(admitted *pro hac vice*)
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Tina Lynn Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Daniel P. Lennington, Assistant Attorney General	daniel.lennington@oag.ok.gov

M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Douglas A. Wilson	doug_wilson@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS	

Louis Werner Bullock	lbullock@bullock-blakemore.com
James Randall Miller	rmiller@mkblaw.net
MILLER, KEFFER & BULLOCK	

David P. Page	dpage@edbelllaw.com
BELL LEGAL GROUP	

Frederick C. Baker	fbaker@motleyrice.com
Lee M. Heath	lheath@motleyrice.com
Elizabeth C. Ward	lward@motleyrice.com
Elizabeth Claire Xidis	cxidis@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Ingrid L. Moll	imoll@motleyrice.com

Jonathan D. Orent
Michael G. Rousseau
Fidelma L. Fitzpatrick
MOTLEY RICE, LLC
Counsel for State of Oklahoma

jorent@motleyrice.com
mrousseau@motleyrice.com
ffitzpatrick@motleyrice.com

Robert P. Redemann
Lawrence W. Zeringue
David C. Senger
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.

rredemann@pmrlaw.net
lzingue@pmrlaw.net
dsenger@pmrlaw.net

Robert E Sanders
Edwin Stephen Williams
YOUNG WILLIAMS P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.

John H. Tucker
Theresa Noble Hill
Colin Hampton Tucker
Leslie Jane Southerland
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

jtucker@rhodesokla.com
thill@rhodesokla.com
ctucker@rhodesokla.com
ljsoutherland@rhodesokla.com

Terry Wayen West
THE WEST LAW FIRM

terry@thewestlawfirm.com

Delmar R. Ehrich
Bruce Jones
Dara D. Mann
Krisann C. Kleibacker Lee
Todd P. Walker
FAEGRE & BENSON, LLP

dehrich@faegre.com
bjones@faegre.com
dmann@faegre.com
kkleee@faegre.com
twalker@faegre.com

Counsel for Cargill, Inc. & Cargill Turkey Production, LLC

James Martin Graves
Gary V Weeks
Paul E. Thompson, Jr
BASSETT LAW FIRM

jgraves@bassettlawfirm.com
gweeks@bassettlawfirm.com
pthompson@bassettlawfirm.com

George W. Owens
Randall E. Rose
OWENS LAW FIRM, P.C.

gwo@owenslawfirmpc.com
rer@owenslawfirmpc.com

Counsel for George's Inc. & George's Farms, Inc.

A. Scott McDaniel
Nicole Longwell
Philip Hixon
Craig A. Merkes
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC

smcdaniel@mhla-law.com
nlongwell@mhla-law.com
phixon@mhla-law.com
cmerkes@mhla-law.com

Sherry P. Bartley
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC
Counsel for Peterson Farms, Inc.

sbartley@mwsgw.com

John Elrod
Vicki Bronson
P. Joshua Wisley
Bruce W. Freeman
D. Richard Funk
CONNER & WINTERS, LLP
Counsel for Simmons Foods, Inc.

jelrod@cwlaw.com
vbronson@cwlaw.com
jwisley@cwlaw.com
bfreeman@cwlaw.com
rfunk@cwlaw.com

Stephen L. Jantzen
Paula M. Buchwald
Patrick M. Ryan
RYAN, WHALEY, COLDIRON & SHANDY, P.C.

sjantzen@ryanwhaley.com
pbuchwald@ryanwhaley.com
pryan@ryanwhaley.com

Mark D. Hopson
Jay Thomas Jorgensen
Timothy K. Webster
Thomas C. Green
SIDLEY, AUSTIN, BROWN & WOOD LLP

mhopson@sidley.com
jjorgensen@sidley.com
twebster@sidley.com
tcgreen@sidley.com

Robert W. George
Michael R. Bond
Erin W. Thompson
KUTAK ROCK, LLP
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.

robert.george@kutakrock.com
michael.bond@kutakrock.com
erin.thompson@kutakrock.com

R. Thomas Lay
KERR, IRVINE, RHODES & ABLES

rtl@kiralaw.com

Jennifer Stockton Griffin
David Gregory Brown
LATHROP & GAGE LC
Counsel for Willow Brook Foods, Inc.

jgriffin@lathropgage.com

Robin S Conrad
NATIONAL CHAMBER LITIGATION CENTER

rconrad@uschamber.com

Gary S Chilton
HOLLADAY, CHILTON AND DEGIUSTI, PLLC

gchilton@hcdattorneys.com

Counsel for US Chamber of Commerce and American Tort Reform Association

D. Kenyon Williams, Jr.
Michael D. Graves
Hall, Estill, Hardwick, Gable, Golden & Nelson

kwilliams@hallestill.com

mgraves@hallestill.com

Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.

Richard Ford
LeAnne Burnett

richard.ford@crowedunlevy.com

leanne.burnett@crowedunlevy.com

Crowe & Dunlevy

Counsel for Oklahoma Farm Bureau, Inc.

Kendra Akin Jones, Assistant Attorney General
Charles L. Moulton, Sr Assistant Attorney General

Kendra.Jones@arkansasag.gov

Charles.Moulton@arkansasag.gov

Also on this 21st day of December, 2007 I mailed a copy of the above and foregoing pleading to:

David Gregory Brown
Lathrop & Gage LC
314 E HIGH ST
JEFFERSON CITY, MO 65101

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

Cary Silverman
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

Gary V. Weeks
Bassett Law Firm
P. O. Box 3618
Fayetteville, AR 72702

Dustin McDaniel
Justin Allen
Office of the Attorney General (Little Rock)
323 Center St, Ste 200
Little Rock, AR 72201-2610

/s/ Richard T. Garren